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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 BETTER NUTRITIONALS, LLC, a
15 California Limited Liability Company,

16 *Plaintiff,*

17 vs.
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19 GOLI NUTRITION, INC., (a
20 CANADIAN CORPORATION); *et al.*,

21 *Defendants.*
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Case No. 22-cv-02219-SSS-SHK

STATUS REPORT

1 Plaintiff Better Nutritionals, LLC (“Better Nutritionals”), respectfully submits
2 this status report to address the Court’s text entry order issued as Docket No. 20.
3 Better Nutritionals sincerely apologizes to the Court for this late submission due to
4 an internal calendaring entry on the part of counsel.

5 To address the Court’s inquiry regarding the automatic stay, the automatic
6 stay in bankruptcy does not prevent the debtor, Better Nutritionals, from pursuing
7 affirmative claims. 11 U.S.C. § 362 provides that the filing of a bankruptcy petition
8 operates as a stay of, among other things, “the commencement or continuation . . . of
9 a judicial, administrative, or other action or proceeding against the debtor.” 11
10 U.S.C. § 362(a)(1). However, the stay does not apply to actions commenced by the
11 debtor. *See In re Palmdale Hills Prop., LLC*, 423 B.R. 655, 663–64 (B.A.P. 9th Cir.
12 2009), *aff’d*, 654 F.3d 868 (9th Cir. 2011). In that case, the court explained the
13 distinction as follows:

14 Additionally, the automatic stay has been found inapplicable to
15 lawsuits initiated by the debtor. *Eisinger v. Way (In re Way)*, 229
16 B.R. 11, 13 (9th Cir. BAP 1998) (primary policy considerations do
17 not exist where debtor has initiated a lawsuit against a creditor);
18 *Martin-Trigona v. Champion Fed. Sav. & Loan Ass’n*, 892 F.2d 575,
19 577 (7th Cir. 1989) (statutory language refers to actions “against the
20 debtor”). Alternatively, a defendant in an action brought by a
21 plaintiff/debtor may defend itself in that action without violating the
22 automatic stay. *Gordon v. Whitmore, (In re Merrick)*, 175 B.R. 333,
23 336 (9th Cir. BAP 1994); *In re Way*, 229 B.R. at 13.

24 *Id.*

25 Thus, the automatic stay does not prevent the debtor from moving forward in
26 this litigation, and this action is one of the debtor’s main assets of its bankruptcy
27 estate, which it intends to pursue for the benefit of its creditors.

28 The summons on the amended complaint was issued January 12, 2023 [ECF
No. 29]. At this time, Better Nutritionals has stipulated with various different groups
of defendants to extend responsive deadlines. Accordingly, no defendants have filed
responses to the complaint, as they are not yet due.

1 In light of the fact that the complaint is not yet at issue as to any defendant,
2 Better Nutritionals respectfully requests that the Court continue the status
3 conference set for March 24, 2023 for approximately 60 days. Better Nutritionals
4 expects to be in a position to provide a more substantive recommendation for how
5 this case should proceed once defendants have had the opportunity to timely respond
6 to the complaint.

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8 DATED: March 20, 2023

Respectfully submitted,

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10 FOLKENFLIK & MCGERITY LLP

11 By: /s/ Max Folkenflik
12 Max Folkenflik

13 BG LAW LLP

14
15 By: /s/ Jessica L. Bagdanov
16 Jessica L. Bagdanov

17 Attorneys for Plaintiff
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